



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of William Able,
Newark School District

Court Remand

CSC Docket No. 2021-1911

ISSUED: SEPTEMBER 7, 2021 (HS)

The Superior Court of New Jersey, Appellate Division, has remanded the matter of William Able’s request for back pay for further proceedings.

As background, the appellant, a Senior Custodian with the Newark School District, was removed from employment, effective September 16, 2015, on charges of conduct unbecoming a public employee, misuse of public property, and other sufficient cause. Upon his appeal, the matter was transmitted to the Office of Administrative Law for a hearing. Following a hearing and the Commission’s *de novo* review, the appellant’s removal was modified to a six-month suspension. Further, the Commission ordered that the appellant be reinstated and awarded mitigated back pay, benefits, and seniority for the period following the six-month suspension to the date of actual reinstatement. *See In the Matter of William Able* (CSC, decided April 4, 2018).¹ The appellant returned to work on June 18, 2018. However, the parties were unable to agree on the amount of back pay due, and the appellant requested Commission review. The Commission, finding that the appellant failed to make reasonable efforts to mitigate his damages, denied all back pay. *See In the Matter of William Able* (CSC, decided June 12, 2019).

The appellant appealed to the Appellate Division. He contended, among other things, that the Commission erred in denying him back pay for the ten-week period between the reinstatement decision and his actual reinstatement. The court agreed that the appellant was entitled to back pay for the period from the April 6,

¹ The decision was issued April 6, 2018.

2018 issue date of the reinstatement decision to his date of actual reinstatement on June 18, 2018. Specifically, *N.J.A.C.* 4A:2-2.10(d)5 provided:

An employee shall not be required to mitigate back pay for any period between the issue date of a [Commission] decision reversing or modifying a removal or reversing an indefinite suspension and the date of actual reinstatement. The award of back pay for this time period shall be reduced only by the amount of money that was actually earned during that period, including any unemployment insurance benefits received.

Pursuant to the regulation, the appellant was not required to mitigate back pay for the period between April 6, 2018 and June 18, 2018. Moreover, the regulation required that the award of back pay be “reduced only by the amount of money that was actually earned during that period, including any unemployment insurance benefits received.” The court noted that the record did not indicate that the appellant received any income during the ten-week period. The appellant had certified in a January 2019 affidavit that he was not “gainfully employed” during his period of separation, and the record did not include any tax return information identifying his income for 2017 or 2018. Therefore, the court reversed that portion of the Commission’s June 12, 2019 decision to the extent it denied the appellant’s claim for back pay from April 6, 2018 to June 18, 2018. It ordered that on remand, the appellant shall file a certification with the Commission stating whether he received any unemployment benefits for this period and, if so, the amount of such benefits. In the event that the appellant did receive such compensation, the court ordered the Commission to determine whether reimbursement to the unemployment compensation fund was necessary under *N.J.S.A.* 43:21-5b (providing that “an individual who is restored to employment with back pay shall return any benefits received under this chapter for any week of unemployment for which the individual is subsequently compensated by the employer”) or *Department of Labor and Industry v. Smalls*, 153 *N.J. Super.* 411 (App. Div. 1977), where it was determined that the Department of Labor and Workforce Development (Department)

. . . should be able to recoup benefits paid when it is subsequently discovered that the discharge, necessitating application for the benefits, was in error and the employee is subsequently compensated for that error. That the employer deducts the amount of those benefits from a back pay award should not deprive the Department of its right, given by statute, to recover the money merely because it is in the possession of the employer.

On remand, the appointing authority, represented by Bernard Mercado, Senior Associate Counsel, advises that the appellant’s gross, unmitigated salary

from April 6, 2018 to June 18, 2018 would have been \$12,108.93. The appellant, represented by Alexander Hemsley III, Esq., certifies that he did not receive unemployment benefits or any other compensation during that timeframe.

CONCLUSION

The Appellate Division remanded this matter for the determination of the appellant's entitlement to back pay from April 6, 2018, the issue date of the Commission's decision modifying his removal, to June 18, 2018, the date of his actual reinstatement, pursuant to *N.J.A.C.* 4A:2-2.10(d)5. The regulation provides that the employee is not required to mitigate back pay for such period and that the back pay award is to be reduced only by the amount of money that was actually earned during that period, including any unemployment insurance benefits received. The appointing authority advises that the appellant's gross, unmitigated salary in the relevant period would have been \$12,108.93. The appellant certifies that he did not receive unemployment benefits or any other compensation during that timeframe. Accordingly, the appellant is entitled to a back pay award of \$12,108.93.

N.J.A.C. 4A:2-2.10(d)2 provides that the award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payments, and any other sums normally withheld. Thus, the appointing authority, by rule, should reduce the appellant's back pay award stated above consistent with this provision and provide the appellant with a full accounting of its deductions when it makes its payment to the appellant. *See In the Matter of Ronald Dorn* (MSB, decided December 21, 2005).

Since the appellant received no unemployment benefits, the Commission has no occasion to determine whether reimbursement to the unemployment compensation fund is necessary.

ORDER

Therefore, it is ordered that the Newark School District pay William Able the gross amount of \$12,108.93 for back pay within 30 days of receipt of this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1ST DAY OF SEPTEMBER, 2021

Deirdre' L. Webster Cobb

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